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JUDICIAL ETHICS OPINION JE-40

Formal

QUESTION: May a district judge serve on a task force whose sole purpose is the distribution of funds which are derived from defendants who are placed in the court's diversion program upon condition that they contribute a sum certain to the task force?

ANSWER: No.

REFERENCES: SCR 4.300, Canon 2 and Canon 5B.

OPINION (November 1982):


We are informed that the task force involved here conducts programs in the schools aimed at educating young persons on the dangers of alcohol abuse, and that its funds are derived solely from the court's diversion program. We are also informed that the diversion program is a form of pretrial probation under which defendants who are accused of selling liquor to minors are probated upon condition that they contribute a specified amount to the task force. The district judge sets the amount of the contribution.

Canon 2 provides that "A judge should avoid impropriety and the appearance of impropriety in all his activities," and Canon 5B provides in part as follows:

A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. . . . (Emphasis added)

Generally, we think that a judge may serve with a group which is dedicated to educating young people on alcohol abuse. Here, however, the task force derives its funds from the action of the judge in setting conditions for diversion of defendants in his court. A judge who serves on that committee would in effect be collecting the funds from persons who are brought into his court, and would then decide how those funds should be spent. In the view of the public, the amount set by the judge as a condition of diversion might depend upon the needs of the task force. That perception would, of course, reflect adversely upon his impartiality and the appearance of impropriety would be great.

For these reasons we hold that a district judge should not serve on the task force in question.


B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary